



The Attorney General of Texas

February 1, 1982

MARK WHITE
Attorney General

Supreme Court Building
P. O. Box 12548
Austin, TX. 78711
512/475-2501
Telex 910/874-1367
Telecopier 512/475-0266

1607 Main St., Suite 1400
Dallas, TX. 75201
214/742-8944

4824 Alberta Ave., Suite 180
El Paso, TX. 79905
915/533-3484

20 Dallas Ave., Suite 202
Houston, TX. 77002
713/650-0666

306 Broadway, Suite 312
Lubbock, TX. 79401
806/747-5238

4309 N. Tenth, Suite B
McAllen, TX. 78501
512/682-4547

200 Main Plaza, Suite 400
San Antonio, TX. 78205
512/225-4191

An Equal Opportunity/
Affirmative Action Employer

Mr. Albert Del Rosa
Acting City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767

Open Records Decision No. 306

Re: Whether copy of winning telecommunications consulting firm proposal held by the city of Austin is public under the Open Records Act

Dear Mr. Del Rosa:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether a proposal submitted by a telecommunications consulting firm is available to the public. You state that on June 11, 1981, the Austin City Council, on the basis of requested bids, awarded to the Warner Whitney Group, Inc. a contract to provide telecommunications system consultant services for the city of Austin. On July 8, 1981, one of the unsuccessful bidders requested a copy of the winning proposal. You suggest that portions of the proposal are excepted from disclosure by sections 3(a)(4) and 3(a)(10) of the Open Records Act, which authorize the withholding of:

(4) information which, if released, would give advantage to competitors or bidders;

....

(10) trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.

Warner Whitney contends that sections 2, 4, 5, 6 and 8 of its proposal should be withheld. Sections 4 and 6, however, merely identify the personnel who would be assigned to the project and contain resumes listing the education and experience of Warner Whitney employees. As this office said in Open Records Decision No. 175 (1977):

resumes listing the education and experience of... employees... cannot... reasonably be said to fall

within the 'trade secret' or any other exception to the Open Records Act.

In our opinion, the information contained in sections 4 and 6 are not excepted from disclosure.

Section 2 is composed of Warner Whitney's system concept, scope of work and program. As we have frequently observed, Open Records Decision Nos. 255, 238 (1980); 175 (1977), Texas courts have adopted the definition of trade secret contained in the Restatement of Torts, section 757(b) (1939). Hyde Corporation v. Huffines, 314 S.W.2d 763 (Tex. 1958). The Restatement lists six criteria to be used in determining whether particular information qualifies as a "trade secret":

- (1) the extent to which the information is known outside of his business;
- (2) the extent to which it is known by employees and others involved in his business;
- (3) the extent of measures taken by him to guard the secrecy of the information;
- (4) the value of the information to him and to his competitors;
- (5) the amount of effort or money expended by him in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

The company has stated the following in a letter submitted to your office:

...[o]ur scope of work as submitted contains the methodology which we have developed over many years of completing successful engagements and is considered unique to our firm.... The telecommunications consulting industry, from its inception in the 1950's, has been a very competitive industry. The scope of consulting work, the study methodology employed, staffing approach, professional fee structures and the financial statements are all closely held tools of successful management consulting firms specializing in communications consulting.... Our

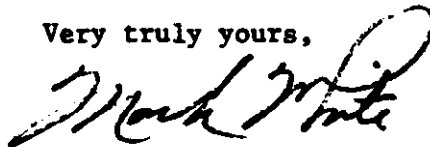
approach to such an assignment as outlined above are proprietary tools of our consulting practice. As a result we do not permit the release of this information by our client without our express permission. In addition, our firm and our personnel have developed over the past 26 years bidding procurement documents for communication system acquisitions, communication engineering approaches, report formats to management, etc. Should the public information statute require the release of this information to anyone requesting the same, particularly a person or persons attempting to educate themselves in an industry we have developed and excelled in, I would respectfully request that our firm and our proposal be withdrawn from the city of Austin and the award be presented to the next qualified organization.

In our opinion, this statement by Warner Whitney indicates substantial compliance with the criteria of the Restatement. See Open Records Decision No. 296 (1981). As a result, we conclude that the material contained in section 2 of the proposal is excepted from disclosure by section 3(a)(10) of the Open Records Act.

Section 5 consists of a detailed list of clients and related information. In Open Records Decision No. 155 (1980), we said that customer lists are excepted from disclosure under section 3(a)(10). See Open Records Decision No. 107 (1975). Accordingly, section 5 may be withheld in its entirety from disclosure.

Section 8 contains Warner Whitney's cost proposal. Such material may be withheld from disclosure under section 3(a)(4) prior to the date the contract with Warner Whitney is in effect. Open Records Decision No. 184 (1978). You do not suggest that information contained in section 8 may be withheld under section 3(a)(10) after the contract is in effect, and, in our opinion, it is not excepted thereunder.

Very truly yours,



MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

RICHARD E. GRAY III
Executive Assistant Attorney General

Prepared by Rick Gilpin
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Susan L. Garrison, Chairman
Jon Bible
Rick Gilpin
Jim Moellinger